

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs April 10, 2007

**BOBBY JAMES MOSLEY v. WAYNE BRANDON, WARDEN**

**Appeal from the Circuit Court for Hickman County**  
**No. 06-5066C     Jeffrey S. Bivins, Judge**

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**No. M2006-02398-CCA-R3-HC - Filed on June 20, 2007**

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The Appellant, Bobby James Mosley,<sup>1</sup> proceeding *pro se*, appeals the Hickman County Circuit Court's summary dismissal of his petition for writ of habeas corpus. In September, 2004, Mosley was convicted by a Marshall County jury of aggravated robbery and was sentenced to twelve years in the Department of Correction. On appeal, Mosley argues that his judgment of conviction is void for the following reasons: (1) the trial court falsely stated that his trial had been severed from a co-defendant's; (2) he was tried in a joint trial and acquitted, but the verdict forms were altered; and (3) his second trial for the same offense, in September, 2004, violated his constitutional protection against double jeopardy. Finding that Mosley is not entitled to relief, we affirm the dismissal of the petition.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed**

DAVID G. HAYES, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ALAN E. GLENN, J., joined.

Bobby James Mosley, *Pro se*, Only, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel E. Willis, Assistant Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**Procedural History**

The facts of the case, as established on direct appeal, are as follows:

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<sup>1</sup>The Appellant identifies himself as "Bobby James Mosley" in his petition for habeas corpus relief, although the judgment he attacks identifies him as "Bobby James Mosley, Jr." It is the policy of this court to use "the title of the case as it appeared in the trial court." See Tenn. R. App. P. 30(b)(2), (d)(2).

In 2003, the victim, Danny Reeves, was closing the McDonald's Restaurant in Lewisburg where he worked as manager. As he locked the restaurant doors, an armed individual appeared and asked him if he was "ready to die." The assailant took the victim's briefcase, which consisted of approximately five thousand dollars in restaurant receipts, and his wallet, which consisted of approximately one thousand dollars. The victim, who was directed to lie on the ground and count slowly to one hundred, counted to twenty-five before realizing that his assailant had left. He then called for assistance.

Several police officers converged on the scene and found the [Appellant] in a nearby field. As he attempted to flee, the [Appellant] discarded a briefcase. Police found three thousand dollars in his pants and underwear. In a search of the [Appellant's] car, police later found the victim's wallet and the clothing the [Appellant] had worn during the robbery. . . .

*State v. Mosley, Jr.*, 200 S.W.3d 624, 625-26 (Tenn. Crim. App. 2005), *perm. to appeal denied*, (Tenn. 2006). During the January 2003 session of the Marshall County grand jury, two separate indictments were returned stemming from the April 20, 2003, aggravated robbery of McDonald's employee, Danny Reeves. The first, Indictment No. 15575, charged only the Appellant with the aggravated robbery of Reeves, while the second, Indictment No. 15628, charged Holly Perryman and Latisha Greer with aggravated robbery of Reeves under a theory of criminal responsibility for the conduct of another. T.C.A. § 39-11-402.<sup>2</sup> The Appellant testified for the defense in Perryman's trial, and she was convicted of the lesser offense of facilitation of aggravated robbery. *State v. Holly Lynn Perryman*, No. M2003-03012-CCA-R3-CD (Tenn. Crim. App. at Nashville, May 2, 2005). Several months later, the Appellant was individually tried by a jury and convicted as charged. His conviction was later affirmed on direct appeal. *Mosley*, 200 S.W.3d 624.

On May 8, 2006, the Appellant filed a petition for habeas corpus relief, which alleged in pertinent part:

The judgment is void. The record of the proceedings upon which the judgment was rendered[] clearly establish[es] that the convicting court was without jurisdiction or authority to convict or sentence the [Appellant] to imprisonment, because the [Appellant] was previously acquitted of the offense upon which the judgment was rendered, in the joint trial of the alleged accessory before the fact, and the verdict of the [Appellant's] acquittal bears a false case number. . . .

On June 8, 2006, the habeas corpus court dismissed the petition on the grounds that "[t]he [Appellant] has failed to state a colorable claim for habeas corpus relief." No appeal was taken.

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<sup>2</sup>The indictment alleged that Perryman and Greer "did solicit, directs [sic] aids [sic] or attempted to aid another, to-wit Bobby James Mosley to commit the offense of aggravated robbery" of Danny Reeves.

On September 25, 2006, the Appellant filed a second petition for habeas corpus relief, the subject of the instant appeal, which alleges that:

The sentence and judgment is illegal and void. The trial judge abused his discretion or authority by illegally severing the original joint trial of the [Appellant] (the alleged principal) and the alleged accessory before the fact (tried before her principal), in violation of Rule 14 of T.C.R.P.; and the four-page verdict forms of the joint trial of the [Appellant and Perryman were] altered to reflect that the alleged accessory before the fact was acquitted in the crime in question and found guilty of a different charge, when the [Appellant] was actually acquitted in the crime in question, which resulted in the illegal restraint of the [Appellant's] liberty. . . .

In his memorandum in support of his petition, the Appellant asserted that he was jointly tried with his two co-defendants, despite the fact that “[t]he information entered into the record by the Court and [the State] was false and suggest[ed] that the case was severed.”

The State moved to dismiss the petition on the grounds that: (1) it was barred by res judicata because the court had considered the same claims in the Appellant's previous habeas corpus petition; (2) the Appellant failed to comply with the mandatory statutory requirements for seeking habeas corpus relief; and (3) the Appellant's judgment and sentence is neither illegal nor void, and his sentence has not expired. On October 24, 2006, the habeas corpus court granted the State's motion to dismiss, finding that “[t]he issues presented have been previously determined and the petition fails to meet the statutory requirements of Tenn. Code Ann. § 29-21-107(b)(4).”

### **Analysis**

The right to habeas corpus relief is guaranteed in article I, section 15 of the Tennessee Constitution. Such relief is available “only when ‘it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired.” *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). Thus, the writ of habeas corpus will issue only in the case of a void judgment or to free a prisoner after his term of imprisonment or other restraint has expired. *Summers*, 212 S.W.3d at 255. In contrast to a post-conviction petition, a habeas corpus petition is used to challenge void and not merely voidable judgments. *Id.* at 255-56. A voidable judgment is one that is facially valid and requires proof beyond the face of the record or judgment to establish its invalidity. *Id.* at 256; *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998). A void judgment “is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment.” *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999); *Dykes*, 978 S.W.2d at 529.

A petitioner bears the burden of proving a void judgment or illegal confinement by a preponderance of the evidence. *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). The determination

of whether habeas corpus relief should be granted is a question of law. *Summers*, 212 S.W.3d at 255; *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Therefore, our review is *de novo* with no presumption of correctness given to the findings and conclusions of the lower court. *Summers*, 212 S.W.3d at 255; *State v. Livingston*, 197 S.W.3d 710, 712 (Tenn. 2006).

The Habeas Corpus Act requires a court to review the petition and dismiss it unless it alleges a cognizable ground for relief. T.C.A. §§ 29-21-101 to -109 (1980). In other words, a petition for a writ of habeas corpus may be summarily dismissed by the trial court without appointment of counsel, without an evidentiary hearing, and without the opportunity to amend the petition, if the face of the petition does not present a cognizable claim. *Earl Thomas Mitchell v. Howard Carlton, Warden*, No. 03C01-9704-CR-00125 (Tenn. Crim. App. at Knoxville, Jan. 12, 1998); *see also State ex rel. Byrd v. Bomar*, 214 Tenn. 476, 381 S.W.2d 280, 283 (Tenn. 1964).

On appeal, the Appellant asserts that the habeas corpus court erred in summarily dismissing his petition. Specifically, he contends he is entitled to habeas corpus relief because: (1) the trial court entered “false information into the record, which suggest[ed] that the case was severed”; (2) someone altered the verdict forms in Perryman’s trial to indicate that the jury found her not guilty of aggravated robbery, but actually the jury found the Appellant not guilty; (3) the trial court erroneously sentenced him for aggravated robbery, after he had actually been acquitted of this charge. The State contends that the habeas corpus court correctly dismissed the Appellant’s petition because he was attempting to relitigate issues which had been decided in his first habeas corpus proceeding and because he alleged claims which would only render his judgment voidable, not void. Following review, we agree that summary dismissal of the petition was proper as: (1) the Appellant’s claims have been previously determined; (2) the Appellant has failed to establish his claims, and, further, the Appellant’s contentions, even if established, would establish only voidable convictions, not void; and (3) the Appellant has failed to comply with the statutory procedure required in filing a habeas corpus petition.

### **I. Previously determined**

As noted, on May 8, 2006, the Appellant filed his first habeas corpus petition, asserting that “the convicting court was without jurisdiction or authority to convict or sentence the [Appellant] to imprisonment because [he] was previously acquitted of the offense.” On May 8, 2006, the habeas corpus court dismissed the petition on the ground that “the Appellant has failed to state a colorable claim for habeas corpus relief.” On September 25, 2006, the Appellant filed a second petition for relief challenging the same judgment of conviction, which the court dismissed, in part, because “[t]he issues presented have been previously determined.”

On appeal, the Appellant attempts to distinguish the two petitions by asserting that his first petition did not address the issue that the trial court made false statements in the record or that someone altered the jury verdict forms. This assertion is misplaced because both habeas corpus petitions are premised upon the ground that the Appellant is currently restrained of his liberty for a conviction for which he was found not guilty. Dismissal of the second petition was proper because

this issue was presented in the Appellant's first habeas corpus petition with that petition being dismissed for failure to state a colorable claim. Thus, the Appellant is not entitled to relief. See *James Yates v. State*, No. W2005-01047-CCA-R3-HC (Tenn. Crim. App. at Jackson, Oct. 25, 2005) (citing *John C. Tomlinson v. State*, No. M2001-02152-CCA-R3-CO (Tenn. Crim. App. at Nashville, June 28, 2002).

## **II. Failure to Establish Claims**

Although the record on appeal fails to include the trial proceedings of this case and the companion cases referenced by the Appellant, this court may take judicial notice of its own records and, in an abundance of caution, we have reviewed the archived records in both the Appellant's and Perryman's cases. See *State ex rel. Williamson v. Bomar*, 376 S.W.2d 451, 453 (1964). Judicial notice of other cases advancing a similar claim of relief and involving the same parties or in collateral cases presenting similar or related issues is permissible, especially when the relevance of the prior litigation is expressly made an issue in the case on appeal. The trial court's record shows that the Appellant was singularly indicted, on May 21, 2003, by a Marshall County grand jury on one count of aggravated robbery of Danny Reeves. The record in Perryman's case shows that she and Latisha Greer were jointly indicted on June 18, 2003, on one count of aggravated robbery of Reeves. Perryman moved to sever her trial from Greer's, and, apparently, the motion was granted because she was tried separately on September 25 and 26, 2003, and convicted of facilitation of aggravated robbery.

There is nothing in either record to support the Appellant's assertion that his case was consolidated with Perryman's. Indeed, the record contains a statement by the Appellant's trial counsel that he advised the Appellant not to testify at Perryman's trial because his testimony could pose a problem for him at his trial, which was to follow. Moreover, the Appellant advised the court, "I am ready to tell the truth and testify on behalf of this person over here." "I came over here . . . [to] testify on behalf of that person over there . . . ." "The same thing I am going to testify to today is what I am testifying to and wrote a statement to *in my own case*." (emphasis added). The trial judge reviewed the advice the Appellant's attorneys had given him and confirmed that they "advised you that you should not testify at these proceedings because you may make statements that could incriminate you and hurt you at your trial."

On August 5 and 6, 2004, the Appellant was tried separately and convicted of aggravated robbery as indicted. Thus, the record does not support the Appellant's assertions that his case was consolidated with Perryman's or that he was acquitted at her trial. Accordingly, there is no merit to his argument that the trial judge improperly severed his case from Perryman's or that his trial violated double jeopardy protections.

Notwithstanding our conclusion that the Appellant's factual claims are not supported by the record, we would further note that even if supported, the asserted derivative habeas corpus claims of double jeopardy, violation of due process, and violation of equal protection are not cognizable claims for habeas corpus relief. See *Smith v. Hesson*, 63 S.W.3d 725, 728 (Tenn. Ct. App. 2001)

(claims regarding violation of due process and equal protection do not state colorable claims for habeas corpus relief); *Ralph Phillip Claypole v. State*, No. M1999-02591-CCA-R3-PC (Tenn. Crim. App. at Nashville, May 16, 2001 (a double jeopardy claim is not cognizable in a habeas corpus proceeding). The Appellant's claims, even if proven, would result only in his conviction being voidable, not void. *See Archer*, 851 S.W.2d at 163.

Thus, the Appellant's argument that his judgment is void is without merit. Clearly, the Marshall County Circuit Court had subject matter jurisdiction over the offense and the sentence imposed. Furthermore, the petition does not allege that his sentence has expired, causing him to be restrained illegally. Because the factual allegations relied upon have not been proven and, even if proven, would have presented voidable, as opposed to void errors, habeas corpus relief is not warranted.

### **III. Failure to produce prior petition**

Finally, we conclude that the habeas corpus court did not err in dismissing the Appellant's petition because it failed to comply with statutory requirements. Tennessee Code Annotated section 29-21-107 provides, in part, as follows:

(b) The petition shall state:

....

(4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure to do so.

T.C.A. § 29-21-107 (2006). The Appellant's second petition did not disclose the fact that he had filed an earlier petition, nor did it provide an explanation for failing to do so. In fact, the petition clearly states, "[t]his is the first petition for the writ." The procedural requirements for habeas corpus cases "are mandatory and must be followed scrupulously." *Summers*, 212 S.W.3d at 259. Thus, we conclude that because the Appellant failed to comply with those requirements at the trial level, the habeas corpus court properly dismissed the Appellant's second habeas corpus petition on the ground that the Appellant failed to attach a copy of his previously filed petition and judgment. *See id.*

### **CONCLUSION**

After review of the pleadings, the record, and the applicable law, this court concludes that the Appellant is not entitled to relief. Accordingly, the judgment of the Hickman County Circuit Court dismissing the Appellant's petition for habeas corpus relief is affirmed.

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DAVID G. HAYES, JUDGE